(1) SINGLE BENCH (4)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.NO. 2760 /2006

PETITIONER

Noor Mohammad, Aged about 49 years, S/o. Musaheb Ali, R/o. Main Road Simga, Noor Hardware, Simga, District Raipur (C.G.)

P.R. No. 2826/06
Presented by Shri A.K. Subey
dated 13/6/06

VERSUS

RESPONDENTS

1. State of Chhattisgarh,
Through the Secretary,
Department of Urban Development & Administration,
Mantralaya, D.K.S. Bhawan,
Raipur.

RECEIPT
CLERK BILASPUR
13/6/06

2. Chief Municipal Officer,
Nagar Panchayat, Simga, District Raipur (C.G.).

3. President,
Nagar Panchayat, Simga, District Raipur (C.G.)

12161/06

4. Nagar Panchayat Simga,
Through Chief Municipal Officer,
Simga, District Raipur (C.G.).

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

1. **PARTICULARS OF THE PETITIONER**

As mentioned above in the cause title.

2. **PARTICULARS OF THE RESPONDENTS**

As mentioned above in the cause title.

(10)

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION NO. 2759/2006

Ajay Adwani

Vs.

State of Chhattisgarh and others

WRIT PETITION NO.2761/2006

Dewanand Adwani

Vs.

State of Chhattisgarh and others

WRIT PETITION NO. 2760/2006

Noor Mohammad

Vs.

State of Chhattisgarh and others

Appearance:

Shri A.K. Tiwari, Counsel for the petitioners

Shri Satish Gupta, Dy. Govt. Advocate for the State/respondent No.1.

Shri Virendra Sharma, Counsel for respondents No. 2, 3 & 4.

ORAL ORDER
(12.9.2006)

SUNIL KUMAR SINHA, J.

(1) These are the three Writ Petitions filed by the three highest bidders, who had participated in the proceedings of auction of shops of Nagar Panchayat, Simga, District – Raipur (C.G.), which took place on 16/5/2006.

(2) The brief facts are that Nagar Panchayat, Simga, has contracted many shops in Bus Stand, Simga. These shops were proposed to be given on lease by auction for certain period. It was decided by the Nagar Panchayat that the shops shall be put on auction and the highest bidders in the auction be allotted the shops on lease so that, it may bring more earning to the Nagar Panchayat and the suitable and competent persons should get the shops according to the bid offered by them. For the purposes of bidding and auction, certain conditions were also framed by the Nagar Panchayat and the bidding had to take place according to the said conditions. A copy of such conditions has been filed as Annexure P-2 in WP No.2761/2006. Apart from many general conditions in this document, an important condition vide condition No.3 is that the bidding shall be made by the person, who, in fact, wants to take the shop in lease and the same shall not be made by his agents/representatives etc. The date for auction was fixed on 16/5/2006. On 16/5/2006, the auction began from shop No.1 onwards. Admittedly, the petitioner in WP No.2759/2006 namely Ajay Adwani was the highest bidder for shop No.1 and the bidding was finalized for the said shop in sum of Rs.2,08,000/- (Two Lakh Eight Thousand) and ultimately, the recommendations for allotment of this shop was made in his favour on account of he being the highest bidder for the said shop in the said open auction.

(3) Likewise, for shop No.2, the petitioner in WP No.2761/2006 namely Dewanand Adwani was the highest bidder and the bidding for this shop closed at Rs.2,15,000/- (Two Lakh Fifteen Thousand) and accordingly, the steps for further action for allotment were taken by the Nagar Panchayat. Likewise, the petitioner in WP No.2760/2006 was the highest bidder for shop No.3, as he gave the highest bid in sum of Rs.2,26,000/- (Two Lakh Twenty Six Thousand) and the steps for allotment of this shop was also taken in his favour. Later on, the dispute arose,

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when the bidding in relation to shop No.4 was going on and ultimately, the situation became worse when, as per contention of learned counsel for the Nagar Panchayat, the persons assembled at the place of bidding started interfering with the working of the persons of the Nagar Panchayat and the situation became so tense that ultimately, further bidding had to stop by the Nagar Panchayat. The persons, who were present there made complaint that for shop No.2, which was allotted on the name of Dewanand Adwani, in fact, Dewanand Adwani had not come for the bidding and the bidding was given by his brother namely Ajay Adwani and in this manner, the allotment in his favour is in violation of the general conditions of allotment, which should be cancelled.

(4) The Nagar Panchayat has filed return in all the cases. It has been specifically mentioned in para 7 of the return that during the course of auction of shop No.4, a dispute arose between the officials and the bidders and objections were taken that the bidding is made by the representatives and the actual candidates/purchasers are not present in the proceedings, as so far as shop No.2 is concerned, the bidding was made by the brother of the purchaser and when this objection was taken, the said purchaser namely Dewanand Adwani, petitioner in WP No.2761/2006, came hurriedly on the spot and snatched the auction register and put his signature on the register to ascertain his presence during the auction proceedings of said shop No.2.

(5) It appears that thereafter, the auction was stopped on the said date and the Nagar Panchayat vide a resolution dated 26/5/2006 (Annexure P-7) took a decision that the auction for all the shops should be done again and the entire proceedings of the auction including the proceedings relating to shops No.1 to 3 were cancelled and a new date for fresh auction was fixed on 14/6/2006.

(6) By way of this Writ Petition filed by the three highest bidders of the aforesaid shops No.1, 2 & 3, the validity of this action taken by the Nagar Panchayat and the validity of the decision dated 26/5/2006 has been questioned.

(7) Learned counsel for the petitioners submits that when the bidding pertaining to shops No.1 to 3 were already concluded, it was not justified for the Nagar Panchayat to cancel the proceedings of bidding and recommendations for allotment of these shops on the ground that certain dispute took place while the auction of shop No.4 was going on. He also submits that the completion of bidding and proceeding of auction in relation to shops No. 1 to 3 amounts to creation of a concluded contract between the bidders and the Nagar Panchayat and the Nagar Panchayat cannot be allowed to withdraw from the said action taken by them.

(8) On the other hand, learned counsel for the Nagar Panchayat submits that the bidding in relation to shop No.2 was not in accordance with the general conditions (Annexure P-2), as the actual allottee was not present at the time of bidding and the bid was given by his brother, who may be his agent or representative, which is against condition No.3 of the said general conditions. He also submits that the further action taken by the allottee of shop No.2 i.e Dewanand Adwani (petitioner in WP No.2761/2006) by snatching the register from the authorities of the Nagar Panchayat and forcefully putting his signatures in the documents to show that he was present at the time of bidding is not in accordance with law and the action of cancellation of the entire auction was fully justified and the same should not be interfered with by this Court.

(9) So far as the case of petitioner – Dewanand Adwani is concerned, admittedly, bidding was finalized in his favour for

shop No.2 vide the said auction. However, it comes that when the bidding of shop No.4 was going on, this fact was brought to the notice of the authorities of the Nagar Panchayat that in fact, this petitioner – Dewanand Adwani was not present at the time of bidding/auction of shop No.2 and the bid was given by his brother namely Ajay Adwani and when the persons of the Nagar Panchayat started taking action about the auction of shop No.2, he any how got this news and rushed to the spot and he forcefully snatched the register of the Nagar Panchayat and put his signatures at various places so as to make it evident that he in fact, was present at the time of bidding and he had offered the bid for the allotment of the said shop.

(10) Learned counsel for the said petitioner has denied these allegations. His submission is that this ground taken by the Nagar Panchayat is an after thought ground just to anyhow cancel the allotment of shop No.2 to the petitioner – Dewanand Adwani. He refers to the document (Annexure P-7), which is the copy of the proceedings of Nagar Panchayat dated 26/5/2006.

(11) It is apparent from the pleadings of the parties and also the documents filed by them that some dispute arose while concluding the auction of shops No.2 and 4 and the main complaint, so far as shop No.2 is concerned, was that the allottee of the said shop was not present and the bid was offered by his agent or his representative and in this manner, the same was not in accordance with the general conditions issued by the Nagar Panchayat for the said allotment. It would appear that the allegations are made about allotment of shop No.2 only and on account of said allegation in the matter of allotment of shop No.2 only, the auction of entire 3 shops were cancelled.

(12) In the opinion of this Court, in the facts and circumstances of this case, the action taken by the Nagar Panchayat regarding

cancellation of auction of entire three shops on account of allegations against auction of one shop only was not in accordance with law. If according to them, there was some irregularity in the auction of shop No.2, they should have only cancelled the auction pertaining to the said shop, but in any case they should not have cancelled the auction of other shops. The decision taken by the Nagar Panchayat i.e. on 26/5/2006 regarding cancellation of auction of shop No. 1 and 3 deserve to be set aside and it is accordingly set aside.

(13) It is declared that the auction of shop No.1 and 3 dated 16/5/2006 were concluded and they were not required to be cancelled by the Nagar Panchayat on these grounds. The Nagar Panchayat may proceed with further steps regarding allotment of shop No.1 and 3 in favour of their respective highest bidders i.e petitioners in WP No.2759/2006 and 2760/2006.

(14) So far as auction pertaining to shop No.2 is concerned, it is a disputed allotment, as it appears from the statement made on oath by the Nagar Panchayat that the said allotment was done on an offer being made by the agent or the representative of the allottee, which was against condition No.3 of the general conditions. The decision regarding cancellation of allotment of shop No.2 is correct and the same is upheld. The Nagar Panchayat is free to take steps for fresh auction of shop No.2 in accordance with law.

(15) In the result, WP No.2761/2006 is dismissed and WP No.2759/2006 and WP No.2760/2006 are allowed to the extent indicated above.

(16) All the Writ Petitions stand disposed of.

Sd/-
Sunil Kumar Sinha
Judge

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